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The Trial of Khalfani M. Khaldun

State of Indiana
vs.
Leonard McQuay
(Khalfani X. Khaldun)
Defendant

Case No. 71D019508CF00385
Pin No. 39195
ss: file name:
71D019508CF00385RPTI.WP

Charge: (Murder of an Indiana State Prison Official)

Disposition: Evaluation of the trial and sentencing from the audience of the court room.

Summary: Politics, Prejudice and Persecution, as seen through the eyes of a caring support cast of Khalfani X. Khaldun. What was really going on in that court room? This summary is just one of many that will be produced by supporters who attended the trial, who have vowed to be in support of Khalfani and his quest for freedom for however long it takes.

Jury: Twelve, all white jurors who found Khalfani guilty, not caring about the consequences of their actions. This was a biased jury from the moment they entered the court room, until they returned their quickly derived at verdict.



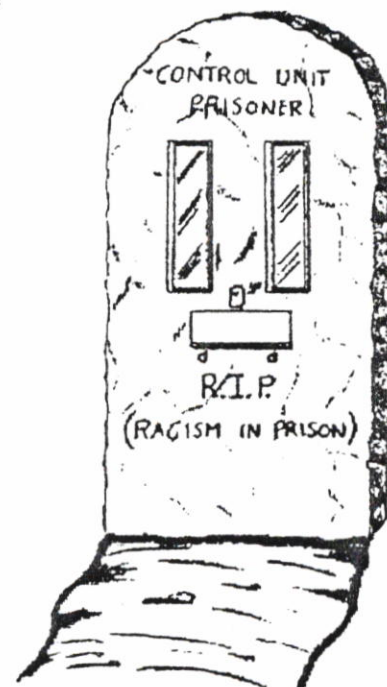
Khalfani Malik Khaldun



Khalfani M. Khaldun
s/n Leonard McQuay #874304
Indiana Dept. of Corr.
Maximum Control Complex
Westville, IN 46391-0557

Republic of New Afrika

*For the fruition of Black
power, for the triumph
of Black nationhood.
I pledge to the Republic
of New Afrika and to the
building of a better
people and a better
world, my total
devotion, my total
resources and the total
power of my mortal life.*



Anyone wanting to make a donation to this cause can call James Reginald Rhodes at (770) - 641 - 9731. He is the spokesman for the Free Khalfani X. Khaldun Joining Hands for Justice Defense Fund. Please take special care and may we all live to see Khalfani released from prison.

The Free Khalfani X. Khaldun
Joining Hands for Justice Defense Fund
c/o James Reginald Rhodes
or Khalfani X. Khaldun
3025 Shallowford Park Manor
Roswell, Georgia 30075

If for some reason there is no response to the information given above, please contact this other address.

Supporter and Assistant
c/o Ms. Jennifer Webb
12445 Ikon Barker Drive
Etiwanda, CA 91739

Please note: This document was put together to give anyone reading it a chance to have an up close and personal look into this trial of Brother Khalfani X. Khaldun. Khalfani has already served close to fifteen years. He was denied release on July 27, 2000. They held him on this murder charge, instead. Now, he must serve thirty additional years, according to the courts, before he is even eligible for parole. In total that would be forty-five years of his life being spent behind bars. Khalfani needs your help. Will you give it to him? Or will you turn your back on him???

* Strength and Unity *

In the city of South Bend, Indiana in the year 1997, a city policeman named Paul Bouch was killed. A series of sweeps and raids occurred, which created a lot of attention and hostilities between the city police and the black youth who were the targets of these sweeps. It was rumored that "The Gouch" as he was called on the streets, and other cops, were terrorizing and shaking people down for dope &/or money throughout the Black community.

His death - being that he was a white man - caused a public outcry for the apprehension of his killer. A Black teenager named Gregory Dickens, a resident of South Bend, was later charged and convicted of his murder. Gregory Dickens was given a life sentence. Unfortunately, the all-white jury in this case, may have discussed the brutality of the Gouch's murder, while weighing the evidence in this (Khalfani's) case.

In a show of solidarity to and for their (white) community and the police, we believe the trial of Khalfani, which was moved to South Bend, even though the crime was committed in Michigan City, was their chance to lash out and send a message of punishment to the Black community. Hopefully, after some professional probing, the truth will come to the surface.

*** Politics * Prejudice * Persecution ***
A Summary of the Facts Presented at Trial

We have put this document together for the purpose of educating the public and to represent the facts as they are and how it was able to convince an all-white jury to return a verdict of guilty during this thinly disguised political trial of Brother Khaltani X. Khaldun.

During the trial of any defendant, the State has the opportunity to present their case first and then the Defense has their chance. The State must prove their case "beyond a reasonable doubt." The Defense does not have to prove the innocence of their client beyond a reasonable doubt.

The burden of proof lies with the prosecution. The Defense simply declares certain facts, presents evidence in support of these facts and points out reasonable doubt.

In this case, the State put what seemed like a strong case together, derived from mere circumstantial evidence. What will seem like stone, solid evidence, is only carefully and strategically coached testimony by a group of people who wanted revenge - for The Gouch and for the prison guard, Phillip K. Curry, who was killed six years earlier, yet amazingly his "killer" is only now being brought to trial, even though he has been in custody all this time.

The testimony and tangible materials that were used and published as evidence were all made to fit a *specific strategic profile*. This was to insure that a lasting imprint would be seered into the jurors minds during the trial and would manifest itself during their deliberations. Hopefully, the same impression will be made by the evidence as explained in this document. You will see how and why this all-white jury has mistakenly convicted Khalfani X. Khaldun of this crime, after only deliberating for nine hours.

The state declined to call any prison informants out of a fear that they would be impeached by their own testimony and their credibility ruined by their own transgressions. They relied on a total of fifteen Indiana State prison officers, State police, DNA experts and forensic specialists. The day the jury was to be selected, the first day of the trial began.

A news report of the case and Khalfani's prior convictions came out in the *South Bend Tribune*. We believe the State released this information to the *South Bend Tribune* to prevent the defense from receiving an impartial jury pool. There were sixty-one prospective jurors called in to report for jury duty. Out of these sixty-one citizens, only one of them was Black! She was a faithful churchgoer, who worked in a hospital. She was immediately taken off the list by the prosecutor.

So, an all-white jury was selected, which off the bat set the tone as to Khalfani receiving a "fair trial" by a "jury of his peers." The state couldn't even claim the illusion of fairness. We will let you be the judge of the evidence. Thankyou.

Judgement

Judge William T. Means had his mind basically made up to set the maximum sentence he could give under the law. This pleased the victim's family and the Indiana Department of Corrections. But did it serve genuine justice?

The Judge wrote:

"It's a very difficult and unusual case," claiming that the jury carefully considered all of the evidence in this six-year old case in the nine hours in which they deliberated. "This is a very difficult experience for all concerned." Noting the type of crime it was and the defendant's alleged violent past, Means said, "I feel compelled under the law to sentence the defendant to the maximum sentence possible." Thus, Khalfani was sentenced to sixty years.

The jury returned their verdict at 1:00 am Saturday, March 31, 2001 after nine exhausting hours of deliberation.

The sentencing date was 9:30 am April 20, 2001, with a packed courtroom in attendance on that day.

Appeals to Come

Soon a series of appeals will be filed to directly challenge the conviction to the Indiana appeals court. We have some real and impactful issues to raise that we hope to show clear errors and violations which would be cause for a new trial. It may even allow the much higher courts a chance to vacate the sentence. The real fight for Khalfani's freedom has only just begun. Those of you who followed this case since 1994, know it has been a long and grueling process. The struggle for freedom continues...

The defense really needs financial assistance from those of you who really believe in the innocence of Khalfani X. Khaldun. We raised \$10,000 in four days to retain the lawyer who eventually took the case. We are in a new, though similar situation, with the cost of an appeal. Anything is possible and we will pursue this to the end.

long-suffering after the recent loss of two of their brothers and their beloved Mother. She traveled from Gary, almost every day to be there to support her brother, with the assistance of her loving husband George, and daughter Alicia. They have been completely devastated by this latest turn of events, having had to watch her brother grow up in prison for close to fifteen years. Now, having to see him sentenced to an additional sixty years, cut them deep. Khalfani has not seen freedom since 1987.

The state wanted to send a message to South Bend and appear to be wanting to champion "justice" to the victim's family at the same time.

Rondell Anderson is a Superintendent of the Indiana State prison who was called to the witness stand by the prosecution to speak at the sentencing hearing. His statement was very political, as he urged that through this sentencing they could send a "powerful message" to the prison population that when they break the law, that this is what is going to happen to them. He suggested that the judge impose *sufficient* consequences on the killer of this officer.

Veronica Davis is Phillip Curry's sister who read aloud the victim impact statement, which overlooked the truths about his drug-using and dealing conduct. She was his sister and no one else can feel her loss or pain. But, one day after a possible careful review of the evidence, she will come to realize that somewhere along the line, her beloved brother went wrong. His wrong came in the fact that he trafficked in drugs in the prison, which may have prompted his attacker to stab him.

Veronica Davis and her family wished early on for the death penalty. But, even though it was constituted as a capital offense, the death penalty was never instituted in this case. We don't dispute her words that her brother was a hero to her family, but he was also a drug using, drug pushing DOC officer.

The Evidence of the Prosecution

Michael Beans is an Indiana State prison guard who testified for the state that on December 13, 1994 he helped the dying officer, Phillip Curry, down some stairs. He claimed he heard him say "Khalfani did it!" The officer also testified that he saw someone from behind who "looked like" Khalfani, as he described a pair of blue jeans and a jean jacket which they confiscated from Khalfani on that fateful night.

This "Khalfani did it" testimony was a linchpin in the prosecution's case. The truthfulness of this statement is compromised by the statements Michael Beans made on the night of December 13, 1994. He wrote in a memorandum that the dying man's words were "McQuay did it." We will never know what was actually said. There is a high probability that nothing was said or something entirely different was said. Michael Beans never did make a positive identification of Khalfani.

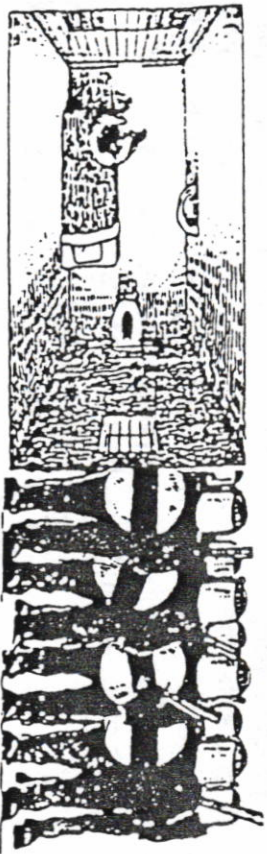
James Bortoff, an Indiana State prison officer, with the rank of Lieutenant, testified that, as the D-Cell House officer in charge that evening, he saw a big figure strike the victim, which made two loud thumping sounds. He was three floors down, looking up. He did not testify that he saw the face of the attacker. Nor did he say it was Khalfani whom he thought he saw. He never heard the dying officer make any damning statements.

Jeff Bachelor is also an Indiana State prison officer and he testified that when he got to the dying officer, he did not see Khalfani in the vicinity, nor did he hear him utter the phrase "Khalfani did it." In fact, he claims an inmate approached him when he was securing the doors. This person supposedly said "Khalfani did it."

So it seems, that the State concocted this statement as a very useful bit of "evidence" in which to convict Khalfani. You will later see why it was important for them to use this supposed statement, for these were the only three officers to testify having assisted the dying officer.

testified that the crime scene had been contaminated. These assisting officers still had the blood dripping from their hands and wore stained clothing which were not cleaned up until after the 170-plus prisoners were locked away in their cells. These officers never once secured the crime scene and blood was tracked throughout the entire half of D-Cell House.

Ronald Kholar and **Samuel Robinson** are two Indiana State prison officers working at this time. They testified that they stripped Khalfani out of his clothing on December 13, 1994. The officer who put his clothing in a bag, Jeff Bachelor, was the exact same officer who testified to being soaked in the blood of the victim. This quite probably contaminated the clothing they took from Khalfani. These men claimed to have followed the chain of custody guidelines by turning over the clothing to investigators, after signing and bagging up everything.



Christopher L. Haskell is an ex-Indiana State prison officer who testified that on this night he found a homemade weapon during a search on the range of which Khalfani lived on. He said no weapons were found in Khalfani's cell area. It was found in a trash bag at the back of the range area. No blood or fingerprints were found on the weapon. They never took any forensic tests of the weapon and it did not fit the victim's wounds, but the judge allowed it to be admitted as evidence, anyway.

A pre-sentencing investigation was conducted by the adult probation department of South Bend. Their report of Khalfani was only accurate to a point, and reeked of evident prejudices. In their report, they recommended the court to sentence Khalfani to a sixty-five year term. They also suggested that he be given only 266 days jail time credit. This totally overlooked the fact that the credit time clock began on January 1st, 1995, when the warrant was read to Khalfani and he was advised of his rights. The date July 28, 2000 does not reflect the accurate date of arrest. Being in prison already, should not stop the good time credit clock, when you are served a murder warrant.

Khalfani's jail time credit should read 4,536 days, dating back to January 31, 1995.

During the sentencing phase of this case, the defense called three witnesses to speak in favor of Khalfani X. Khaldun.

Reg Rhodes is a man from Georgia who got involved with this case after his son asked him to help in the campaign to free Khalfani. After some phone conversations and visits, Reg would become one of Khalfani's closest friends and an unusually strong advocate for his freedom.

He spoke of his relationship with Khalfani in an emotionally powerful presentation. He helped to raise \$15,000 to hire Khalfani's attorney, who represented him in this case. He pleaded with the judge to be fair.

Elnora Rule is Khalfani's sister and she also spoke to the judge from the witness stand, during her brother's sentencing. She, in her sisterly way, highlighted the fact that she has seen her brother go through significant changes in order to become a much better man, whose interests now lies in helping others. In tears, she asked the judge to weigh all of the facts and be as fair as the seriousness of the case would allow. Elnora and the rest of his family have been

On this night, Ajamu stopped in to talk to Khalfani in his cell for a moment, grabbed two sandwiches and then left. He then went to line-up a prisoner's hair before the bell sounded for everyone to lock-up. This witness was slightly nervous on the stand. He did, however, establish Khalfani as being inside his cell at the time that the fatal incident occurred.

Karl Swihart is an Indiana State prison investigator, who at the time of the incident, was sent to investigate the C.A.B. homicide charge, given to Khalfani in January of 1995. The defense had several reasons to call him as a witness. Khalfani's attorney sought to establish through this witness, issues surrounding the victim's conduct.

This witness confirmed for the defense in open court, that Curry was involved in the trafficking of drugs and was placed in the prison tower, in an attempt to stop his activity. What the media didn't talk about was that there was and is evidence that proves unerringly that Mr. Curry was using drugs on the job. Evidence gathered through the chain of custody, show that drugs were found in his possession on the night he was stabbed and is "consistent" with drugs found in his blood, during toxicology analysis, conducted after the autopsy. The results as noted by Dr. Urban, indicate that the levels of THC found in his blood, correspond to the opinion that he smoked dope thirty minutes before his murder. These were the results:

Results of Analysis		
Specimen	Drug/Chemical Identified	Concentration
Blood	Delta-9Tetrahydrocannabinol	8.5 ng/ml
Blood	Delta-9carboxy Tetrahydrocannabinol	38.0 ng/ml

This is a high concentration of the psychoactive ingredients found in marijuana. These results were conducted by experts. A copy of these results and a copy of the autopsy can be provided to anyone who wants to help free Khalfani. Write to us for a copy. Copies of everything unreleased or told by the media will be released before long, as well.

David Kitzel is an Indiana State police crime lab

evidence technician and he testified about the clothing he received that was taken from Khalfani. He also tested the victim's clothing. He testified that he arrived on the crime scene at 9:45 pm the night of December 13, 1994. On the witness stand, Mr. Kitzel would only testify that he received the clothing from the office of the investigator. The night of the stabbing, someone took or cut off the victim's prison officer shirt and t-shirt. No one testified who did this or how it was done, even though the prosecution claimed to have documented the procedure of tagging every single piece of evidence. From 5 pm to 9:45 pm, the disposition of these items were unaccounted for. This witness testified that he only saw them - sealed up - at 9:45 pm.

Sergeant Frank Aldridge is an Indiana State police forensic specialist who testified he found no fingerprints on the knife which was found. The cuts in the victims shirt were supposed to match this weapon. This was demonstrated to the jury, as the prosecutor held the victim's shirt in one hand and this knife in the other. He thrust the knife into the shirt, saying it was a "perfect match." But, this shirt had been sitting in storage for seven years, so this "evidence" was purely circumstantial.

This case was very peculiar in that it took seven years to bring to trial a capital murder case of a prison guard, when the alleged perpetrator was at all times in custody. It made a sham of the right to a "speedy trial."

Dana Moreno is an ex-Indiana State police serologist, who is now working as an F.B.I. agent, and she also testified for the state. She was also responsible for checking all of Khalfani's clothing for possible blood lifts. She clearly described the spot where she thought there was a possible spot that contained blood on his blue jean jacket. She pointed to the area that spelled "Khalfani" that was threaded into the upper left corner of the jacket, above the pocket. Then, she pointed to an Islamic symbol - a half moon and five point star that was also on the upper left corner of the jacket, above the pocket. She did this to insure that this would be taken by the jurors with them

during their deliberations. She testified of receiving this garment in her crime lab.

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This would prove to be a very impactful bit of evidence, along with the "Khalfani did it" statement and that a blue jean jacket was worn by the person leaving the scene. Yet no one testified to seeing the perpetrator's face nor could they positively identify Khalfani. I guess to an all-white jury, predisposed to believe the prosecution, and especially incensed over this type of crime, the actual identity of the perpetrator was not important. All blacks look the same anyway, right? Racism is woven into the system.

Blood found on Khalfani's jacket can/was explained by the three prisoner alibi witnesses who were called from their respective prisons across Indiana, but who were there that fateful night. Their testimony will be reviewed later in this report.

Julie Kyper and **Mary Reed** are DNA experts and they testified about the various tests done on the blood evidence. This was merely to document in the court record that they are qualified to do these tests and responsible for their accuracy. The state sought a court order to do this testing (of Khalfani's blood) in 1996. This was used to match fibers taken from his own blue jean jacket.

Karl Sobieralski is a DNA analyst, who also testified for the state as to the result of the completed analysis of the blood taken from the crime scene - where the crime was committed. Then the blood from the victim and from Khalfani was taken and analyzed. He conducted his tests at the state police laboratory, file #94L-2810, agency case #13-47920.

Both certificates of DNA analysis can be issued to anyone wanting to review them for the purpose of learning the facts. Hopefully, you will use them in support of Khalfani's fight for his freedom.

at Khalfani and exchange a few more words. He clearly states that he never saw Khalfani leave his cell that evening. He also remembers hearing the loud rustling going on and moved to the front of the cell-house. A prisoner said an officer had been stabbed. He returned to stand in front of Khalfani's cell, advising him of the events that had just transpired.

He also established the defense's case in the face of the prosecutor who attempted to rattle his chain, become emotional on the stand and stutter and stammer and not be a calm, credible witness. The difference between how the prosecution "treated" (more like badgered, provoked and blasphemed) the defense's witnesses compared with how the defense treated the prosecution's witnesses, was very racially stark. The prosecution's witnesses were accorded the utmost respect and the defense's were not.

The three defense witnesses' prior history and convictions were paraded by the jury in the classic strategy to make their testimony unbelievable and not to be taken seriously, unlike anything the state said. The prosecutor said they would be "heroes" throughout the prison system, further peeling away the curtains on this political trial. Another ploy was to ask each potential juror if they'd seen the movie, "The Green Mile." This is a movie where a very large Black man is tried and convicted of killing little white girls. He's innocent, though. The real killer a "Wild Bill" confesses to the crime, but the wrongly accused gets killed anyway, exposing the lethality of the racist justice system. I suppose this was used to appear racially impartial &/or to reinforce that whatever the movie was about, Khalfani is guilty.

Ajamu Zaid is another muslim brother and close friend of Khalfani's inner circle, who was called to testify for the defense. Unlike the other two, Ajamu lived on the same range which Khalfani had been assigned to. He also stuck by Khalfani in a close unit, as did the others. They ate together at the same tables, exercised together and held political and Islamic study classes on the prison yard together, as well.

The State had to prove beyond a reasonable doubt that the alibis were invalid. But did they? They know every psychological trick in the book and basically, Khalfani was convicted the moment he first walked into court. After this trial, Khalfani now regrets not taking the stand and trying to fully defend himself against these charges, even against such a stacked deck and under severe prison restriction.

What the Defense Witnesses Had to Say

Sekou Majekedumi is a muslim convict and comrad of Khalfani's, who testified on behalf of the defense. He said that he was present in Khalfani's cell (229) on the night of December 13th, 1994. That on this day, like most days, he along with other muslim brothers, walked the dining hall together. On this night, the kitchen offered "pork chops" which is prohibited to all muslims. Once they returned to the cell-house, they went to Khalfani's cell to fix tuna sandwiches. While trying to remove the top of the can without an opener, he cut his finger on his right hand. This cut was small but it bled a little and caused the blood spots on his jacket.

They were in the cell, when a loud rustling noise occurred towards the front of the cell-house. This was obviously when the fatal incident occurred. This established the defense's alibi, case and point. The prosecutor brought up this witness's prior convictions and the remaining length of his sentence in an attempt to discredit him and his testimony. This witness was a calm and unshakable witness. Sekou is presently housed at the Wabash Valley Correctional Institution in southern Indiana.

Osaze N. Katerere is an alibi witness also called to testify. He is also a muslim who hung out with Khalfani. He remembers the night as follows. He returned from the dining hall and met with Khalfani and asked for something to eat, preferably some chips. Once he got his chips, he went down the range further to Ajamu's cell for some cookies. Then he returned to his range, stopping to look up

Herbert New Kirk was the Superintendent of the Indiana State prison, at the time of this incident in 1994. He was called to testify for the state concerning a meeting held between himself and Khalfani Khaldun, which was prompted by a phone call made by Elnora Rule - Khalfani's sister. She was calling to ask questions concerning her brother's unprovoked, seemingly endless harassment. Mr. New Kirk was also an investigator who once tried to coerce information from Khalfani in 1987. When these attempts met with failure, he promised to never "let up" on Khalfani. (Investigator Karl Swihart.)

One of Khalfani's sisters made contact with Mr. New Kirk. His assistant, Charles Penfield, arranged this meeting to discuss Khalfani's complaints of harassment.

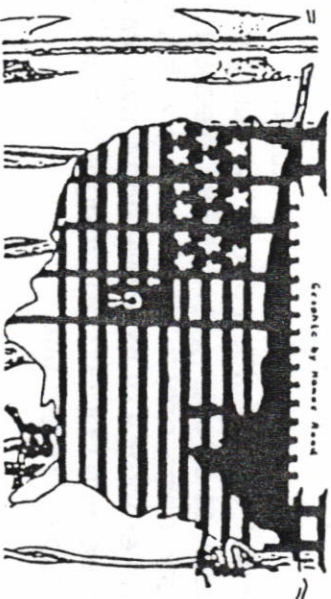
The very next day, after that meeting, the officer was stabbed in D-Cell-House and soon after, perished. The prosecutor, in court, alluded to this meeting, to create an image in the Juror's minds of a scheming murderer - as if Khalfani was pre-planning the attack, by establishing his complaints! He had very real complaints. He was unmercifully harassed and tortured, really, for those isolation cells are the lowest rungs of Dante's hell! The shacking - the gassing - the beatings - it's utterly sickening what goes on in there! These crimes are never brought to trial!

This was ridiculous to insinuate, (that Khalfani was setting up some sort of alibi for a future crime) to say the least. What should have happened, was that the Superintendent should have removed Khalfani from the place he was being harassed at, pending a serious investigation. Instead, he was left there, and shortly after, accused of a crime he did not commit, then shuttled about the gulag dungeons of the state, seen as a "cop (guard) killer" released after finally serving his sentence, only to be picked up within minutes, torn from the embrace of his family and finally (after six years!!) served with papers and brought to trial - for the murder of guard, Phillip Curry.

investigated the murder for the state police. The state and prosecutor John Macijczyk, used this witness in two ways. First, he sat at the prosecutor's table during the whole trial. Then, he testified about his association with the case. Unlike Khalfani's defense lawyer, the prosecutor's office had access to unlimited resources and monies, and controlled all of the principals involved.

This enabled him to achieve complete access to hire experts and professional court people. So, they were able to put on a well-polished show for the Judge and the jury panel, and everyone else present in the courtroom. Frank Midkiff was responsible for interrogating Khalfani X. Khaldun. A lot of the circumstantial evidence that was allowed into evidence was highly objectionable. His actions during the entire trial stand in question. On the first appeal, we must examine closely the role played by this protagonist.

The defense requested a hearing on the motion to dismiss the charge, early on, on the grounds of "double jeopardy." This is because Khalfani was punished twice for the same crime, as he was found guilty of homicide, by the department of corrections. Then, they charged him again with this murder. The judge quickly dismissed this motion without even making a show to consider the meritorious nature of the motion. This too, should be brought up on appeal.



In this case, Khalfani X, Khaldun knew that his best defense would be the testimony of his fellow prisoners who were with him at the time of this incident. These were his alibis, because they're prisoners too and they were with him! In such a defense, it is only necessary to prove that the defendant wasn't at the scene of the crime at the time it was committed. Nobody can be two places at once! These people testified Khalfani was at a specific place, with them, at the time of the murder. The proof of innocence is not the responsibility of a defense. Rather, the state has to prove guilt, beyond a "reasonable doubt." So, defenses, often with meager resources, must rely on the letter of the law, providing evidence refuting a defendant's guilt. But, they don't have the ability to orchestrate an elaborate conviction party like the state is all too willing and able to do.

The defense could have called on up to twenty alibi witnesses, but they were all coming from the Indiana prison population. And since even the Constitution still considers them ripe for actual slavery, these "witnesses" are considered "guilty until proven guilty!" Khalfani suggested to his lawyer, to ask three of these prisoners to the witness stand, hoping this might reduce the demonization of these prisoners, the prosecutor no doubt would be preparing. Maybe this was a mistake, as more voices should have been heard. The prosecutor would have used Khalfani's political views and sensationalized his prison history. Khalfani's writings and community organizational affiliations would be turned on their ear and used against him, rather than be presented as the brilliant, courageous and constructive work that it is. But we were pressed for time and money and opportunity to all that this type of trial entails.

VICTIM IMPACT STATEMENT FROM THE FAMILY OF PHILLIP K. CURRY

State vs. Leonard B. McQuay
Case # 71D019508CF00385

On December 13, 1994, our family experienced a devastating tragedy that has caused a grief that no amount of time will ever heal. Phillip went to work on that fateful day, dressed in a blue correctional officer uniform. He came back to us in a body bag. To this day, we still cannot reconcile ourselves to his sudden and senseless death.

Phillip was an unsung hero to this family. Holidays in our family were always extra special because of Phillip. He never missed a family gathering, and we would always look forward to his smile and appetite. It was difficult not to be happy around Phillip because of his easy-going and understanding nature. Now, it is difficult not to be sad on these special days because Phillip is no longer with us. The death of Phillip was the death of a loving family member.

Phillip's children have been robbed of sharing the wonderful moments of their childhood with their loving father. They will never experience another outing with him, or see his smiling face from the audience at their graduations, or walk with him down the aisle at their weddings. They have lost the wisdom of his fatherly advice at a time when fathers are so important in children's lives. The death of Phillip was the death of a dearly loved father.

Phillip has two (2) grandchildren who have been born since his death. These precious little ones will never know the loving, caring ways of their grandfather. The death of Phillip deprived his grandchildren of an adoring and proud grandfather.

On March 4, 2001, our mother died believing that this day of sentencing of the murderer of her son would never come to pass. Although my mother was pronounced dead in March of this year, her death actually began the day she heard her child had been stabbed to death. The death of Phillip was the death of a devoted son.

To Leonard McQuay, Phillip was a "neo-colonial pig." To us, Phillip was a son, a brother, a father, a grandfather, and a fiancé. To us, Phillip was an unsung hero who gave the supreme sacrifice - his life - doing his job. A blue light will always shine in the homes of the Curry family, remembering Phillip and other fallen officers of the law.

It has been over six (6) agonizing years of grief and sorrow for us. Each grief-filled year has been fraught with waiting and wondering when justice would be served.

We will not forget Phillip. We cannot forget him. Phillip touched the lives of many people with his warm and caring ways.

We are asking that this court also remember Phillip by issuing the maximum sentence possible under the law.

THE STATE OF INDIANA,

To the Sheriff of LaPorte County.

YOU ARE COMMANDED TO ARREST LEONARD MCQUAY

forthwith,

and hold him to bail in the sum of NO BOND Dollars,

to answer at the next term of LaPorte Superior Court No. 2 an indictment for Murder

I.C. 35-42-1-1, Class A Felony, I.C. 35-50-2-3, and for want

of bail commit him to the jail of the County until legally discharged.

WITNESS, my hand and the seal of said court this 27th

day of January, 1995.

ANN SPEVAK, Clerk of the LaPorte Circuit Court,
and ex-officio Clerk of LaPorte Superior Courts

By Sandra B. Costello Deputy

STATE OF INDIANA)

In the ST. JOSEPH SUPERIOR Court

County of ST. JOSEPH)

Of ST. JOSEPH County

2001 Term

State of Indiana)

Plaintiff)

-VS-)

Cause No 71D019508CF00385

46D02-9501-CF-000008

LEONARD MCQUAY)

Defendant)

Motion for Jail Time Credit (In Jail)

12

Comes now the defendant Leonard B. McQuay pro-se and

requests a correction of Jail Time Credit to reflect the time spent in confinement

pursuant to his arrest in the above cause and spent in jail prior to sentencing in the above cause. Said motion shall reflect a truthful and accurate account of the situation relating to this cause, and shall be in the following words to wit:

Statement of Facts

The defendant Leonard McQuay was arrested pursuant to

Order of the Court Under the above cause on the January 31, 1995. The

defendant remained in Jail until his date of Sentencing, which was April 20, 2001

2 Days For 1.

Upon being sentenced on April 20th the defendant was awarded only

266 days jail time credit.

The defendant was in fact confined from the January 31, 1995 to the

April 20, 2001 which is a total of 4, 536 days

Any time a defendant whose liberty has been restricted through imprisonment or confinement requests a trial court to reconsider its previous award of jail time credit, and the defendant's motion in this regard identifies a sufficient factual basis for his eligibility, the court must address the merits of such motion. West's A.I.C. 35-50-6-3. WEAVER v. STATE 725 N.E.2d 945 (2000)

VICTIM IMPACT STATEMENT

To: Veronica Garry Davis
2347 Georgia
Gary, IN 46407

RE: State vs Leonard B McQuay
Case # 71D019508CF00385
Probation Officer: Janet Sears

because you were the victim of a crime, you may have suffered some loss, which, under certain circumstances, the Court may order the defendant repay. You may also wish the Court be made aware of how the offense has affected you and/or your family. Please do so by completing the information below and returning the form to the St. Joseph County Adult Probation Department, 123 S. Lafayette Blvd., Suite 300, South Bend, IN 46601.

1. Your Total Loss and/or Expense Resulting from the Offense:

- a. Description of Property/Loss: _____
- b. Value of Property Stolen: _____
- c. Value of Property Damages (cost to repair): _____
- d. Medical and/or Counseling Expenses: _____
- e. Loss of Wages: _____
- f. Other Loss: _____

Total Claim for Reimbursement: _____

2. Total Amount Covered by Insurance:

3. Name and Address of Your Insurance Company and Agent:

- a. Company: _____
- b. Address: _____
- c. Agent: _____ Telephone: _____
- d. Policy Number: _____ Claim No. _____
- e. Amount of Deductible: _____

4. Here you and/or your victim's representative may provide the Court with a statement on how the offense has affected your and/or your family along with any recommendations for sentencing you may have. If you need additional space, please submit an attached letter (type or write legibly).

Please see ENCLOSED

CERTIFICATION

I hereby certify, under the penalties of perjury, that the above representation are correct to the best of my knowledge.

4-16-01
Date

Veronica G. Davis
Signature of Victim or Victim Representative

17

STATE OF INDIANA)
COUNTY OF LAPORTE)

LAPORTE SUPERIOR COURT NO. 2
CONTINUOUS TERM

STATE OF INDIANA)

VS

Leonard McQuay,
DOC#874304

COURT ORDER - WARRANT ISSUED

Thomas G. Pawloski, Deputy Prosecuting Attorney, files Information for Murder, a Felony, along with the Affidavit for Probable Cause of Frank J. Midkiff, with supporting documentation.

The Court having examined the same, FINDS Probable Cause exists for, and ORDERS the issuance of, a Warrant for the arrest of Leonard McQuay on the Charge of Murder, a Felony.

DATE: Jan 26, 1995 (2:15)

BOND SET AT: No Bond.

JUDGE
LAPORTE SUPERIOR COURT NO. 2

STATE OF INDIANA, COUNTY OF LA PORTE
I HEREBY CERTIFY that the above and foregoing is a true copy of the original filed in this office.

ANN SPE/AX
Clerk of Circuit/Superior Courts

Date: 1-29-95 By: Ann Spe/AX

JAN 26 1995

OFFICE OF CLERK OF SUPERIOR COURT

In Dolan v. State 420 N.E.2d 1364, (1981), the Appellate court set forth

guidelines for determining a defendant's presentence credit time when a defendant is confined for multiple offenses at the same time. The court instructed:

"Where a defendant is confined during the same time for a period of multiple offenses and the offenses are tried separately, the defendant is entitled to a "full credit" for each offense for which he is sentenced. Each "full credit" is determined by the number of days

the defendant spent in confinement for the offense for which the defendant is sentenced up to the date of sentencing for that offense.... The credit will be the number of days the

defendant spent in confinement from the date of arrest for the offense to the date of sentencing for that same offense. "A defendant who has not been awarded proper pre-

sentence jail-time credit time may seek review of this error at any time. West's A.I.C.

35-50-6-3. WEAVER v. STATE 725 N.E.2d 945 (2000)

In Dolan, the court relied upon our Supreme Court's determinations in

Owen v. State 272 Ind. 122, 396 N.E.2d 376, (1979), and Franks v. State, 62 Ind.

649, 323 N.E.2d 221, (1975), reh. denied. Both cases involved defendants who were confined for an arrest on one charge and at the same time were convicted and sentenced in different proceedings on another charge. In deciding whether the defendants were

entitled to credit time, the State supreme court awarded the defendants credit time from the date of the original arrest to the date of the sentencing for that arrest. Owen, supra,

396 N.E.2d at 383; Franks, supra, 323 N.E.2d at 224. The court set forth the rule that a defendant should be given credit for the time served from the day of the arrest on the charge until the time of the sentencing on that charge. Id.

35-50-6-3 Credit time classes

Sec. 3. (a) A person assigned to Class I earns one (1) day of credit time for

each day he is imprisoned for a crime or confined awaiting trial or sentencing.

(b) A person assigned to Class II earns one (1) day of credit time for every

two (2) days he is imprisoned for a crime or confined awaiting trial or sentencing.

(c) A person assigned to Class III earns no credit time.

Therefore the defendant prays this Honorable Court will hear his motion and provide the Plainfield Correctional Institution with an amended abstract of judgement to reflect 4, 536 rather than 266 days jail time credit.

Respectfully Submitted

Leonard McQuay

727 Moon Rd
Plainfield In 46168

CERTIFICATE OF SERVICE

I Leonard McQuay do here by affirm that I have sent a true copy of the foregoing motion to the office of the St. Joseph County Prosecutor located at: St. Joseph county Prosecutor John Maciejczyk
1019 City-County, Bldg, 227 W. Jefferson St. South Bend, IN 46601
by placing the same in the jail mail system this 9th day of May 2001 as prescribed by law. #874304

Leonard McQuay
727 Moon R.d.
Plainfield In 46168

SUPPLEMENTAL REPORT OF THE PROBATION OFFICER TO THE COURT

JUDGE: Honorable William T. Means
St. Joseph Superior Court

DATE: April 16, 2001

RECEIVED

APR 17 2001

NAME AND ADDRESS OF DEFENDANT:

Leonard Bernard McQuay
Indiana Department of Correction

SUPERIOR COURT

CASE NO.: 71D019508CF00385

PN NO.: 39195

FILE NAME: 71D019508CF00385RPT1.WPD

CHARGE:

Murder

DISPOSITION:

The sentencing is scheduled for April 20, 2001.

SUMMARY:

Please see the attached Victim Impact Statement received from Veronica Curry Davis.

Respectfully submitted,

Jennifer J. Cook

Jennifer J. Cook
Probation Officer

Edited by,

Jerry L. Johnson

Jerry L. Johnson
Chief Probation Officer

JJC/JLJ/jjc

71D019508CF00385RPT1.WPD